

1996

# Mario B. Beltran v. Denise Allan : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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MARIO B. BELTRAN,

Plaintiff/Appellant,  
vs.

Case No. 960079-CA

DENISE ALLAN; LDS SOCIAL SERVICES,  
an Agency of the Church of Jesus  
Christ of Latter-Day Saints; and  
JOHN DOES I THROUGH V,

Defendants/Appellees.

Priority No. 2

APPELLANT'S BRIEF

APPEAL FROM THE FOURTH JUDICIAL COURT, UTAH

COUNTY, STATE OF UTAH

JUDGE GUY R. BURNINGHAM

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NOV 15 1996

W. Branch  
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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	)	
Plaintiff/Appellant,	)	
vs.	)	Case No. 960079-CA
	)	
DENISE ALLAN; LDS SOCIAL SERVICES,	)	
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IN THE UTAH COURT OF APPEALS

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MARIO B. BELTRAN,	)	
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DENISE ALLAN; LDS SOCIAL SERVICES,	)	
an Agency of the Church of Jesus	)	
Christ of Latter-Day Saints; and	)	
JOHN DOES I THROUGH V,	)	
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JURISDICTION OF THE COURT

The Utah Court of Appeals Court has original jurisdiction of this matter in accordance with Article VIII, Section 5 of the Constitution of Utah and Utah Code Annotated 78-2a-3(k) (1994 as Amended).

ISSUES PRESENTED FOR REVIEW

The sole issue on appeal relates to the trial court's action in granting the Defendants' Motion for Summary Judgment. The Appellant contends that the trial court committed error in granting the Defendants' Motion for Summary Judgment and relies upon three lines of reasoning to support his position.

1. The Trial Court Committed Error in Ruling that there were no Material Facts Precluding the Granting of Summary Judgment.

The Appellant preserved this issue for appeal in his response to the Defendants' Motion for Summary Judgment and affidavit (R. 227-259).

Because summary judgment by definition does not resolve

factual issues, an appellate challenge to the granting of summary judgment presents only questions of law for review. The conclusions of law are reviewed for correctness, with no deference to the trial court's determination. Country Oaks Condominium Management Comm. v. Jones, 851 P.2d 640, 641 (Utah 1993); Allen v. Prudential Property & Casualty Ins. Co., 839 P.2d 798, 800 (Utah 1992); Perkins v. Great-Western Assurance Company, 814 P.2d 1125 (Utah Ct. Ap. 1991); Transamerica Cash Reserve, Inc. v. Dixie Power and Water, Inc., 798 P.2d 24, 25 (Utah 1990).

The appellate court is to consider the evidence in the light most favorable to the losing party and affirms "only where it appears that there is no genuine issue of fact, or where, even according to the facts as contended by the losing party, the moving party is entitled to judgment as a matter of law." D & L Supply v. Saurini, 775 P.2d 420, 421 (Utah 1989); Themy v. Seagull Enter., Inc., 595 P.2d 526, 528-29 (Utah 1979). The nondeferential standard of review also applies to the threshold issue of whether there are no material issues of fact such that summary judgment is in order. Neiderhauser Builders & Dev. Corp. v. Campbell, 824 P.2d 1193, 1196 (Utah App. 1992).

2. Did the Trial Court Error in Ruling, as a Matter of Law, that the Appellant was not Excused from Filing a Notice of Paternity by the "Impossibility" Exception as Formulated in Ellis v. Social Services Department, 615 P.2d 1250 (Utah 1980) and Utah Code Annotated 78-30-4.8 (Supp. 1994).

The Appellant reserved the issue for appellate review in his response to the Defendants' Motion for Summary Judgment and in his affidavit filed in connection therewith (R. 227-259).

The conclusions of law made by the trial court in applying Ellis are reviewed for correctness, with no difference to the trial court's conclusions. Country Oaks Condominium Management Comm. v. Jones, 851 P.2d 640, 641 (Utah 1993); Allen v. Prudential Property & Casualty Ins. Co., 839 P.2d 798, 800 (Utah 1992); Perkins v. Great-Western Assurance Company, 814 P.2d 1125 (Utah Ct. Ap. 1991); Transamerica Cash Reserve, Inc. v. Dixie Power and Water, Inc., 798 P.2d 24, 25 (Utah 1990).

3. Did the Trial Court Commit Error in Ruling, as a Matter of Law, that the Decision of the Utah Court of Appeals, in the Matter of the Adoption of W, 275 Utah Adv. Rep. 20 (Utah Ct. App. 1995), is Dispositive of the Issues in this Case and, As Applied to the Facts of this Case, is the Utah Adoption Statute, Requiring the Filing of a Notice of Paternity, Constitutional.

The Appellate reserved his right to challenge the trial court's findings on appeal in his response to the Defendants' Motion for Summary Judgment and in his affidavit filed with the court (R. 227-259).

The issue raised herein is a question of law. The appellate court is not obligated to give deference to the trial court's conclusions of law but reviews them for correctness. Western Kane County Special Serv. Dist. No. 1 v. Jackson Cattle Co., 744 P.2d 1376, 1377-78 (Utah 1987).

#### DISPOSITIVE STATUTES

The interpretation of Utah Code Annotated 78-30-4.8 (1994) is important in resolving the issues on appeal in this matter.

(1)(a) Any person who is the father or claims to be the father of a child born outside of marriage may file notice of his claim of paternity and of his willingness and intent to support the child to the best

of his ability with the state registrar of vital statistics in the Department of Health . . .

(2) The notice may be filed prior to the birth of the child but must be filed prior to the time the child was relinquished to a licensed child placing agency or prior to the filing of a petition by a person with whom the mother has placed the child for adoption . . .

(3) The Legislature finds that a certain degree of finality is necessary in order to facilitate the state's interest in expediting the adoption of young children and in protecting the rights and interests of the child, the birth mother, and the adoptive parents. Therefore, a putative father who fails to file his notice of paternity is barred from thereafter bringing or maintaining any action to assert any interest in the child unless he proves by clear and convincing evidence that:

(A) It was not possible for him to file a notice of paternity within the period of time specified in Subsection (2);

(B) His failure to file a notice of paternity was through no fault of his own; and

(C) He filed a notice of paternity within 10 days after it became possible for him to file.

(4) Except as provided in Subsection 78-30-4.1(4) failure to file a timely notice of paternity shall be deemed to be a waiver a surrender of any right to notice of any hearing in any judicial proceeding for adoption of the child, and the consent of that person to the adoption of the child is not required . . . .

#### STATEMENT OF THE CASE

The Plaintiff filed this action to assert his parental rights to a child born to the Defendant Denise Allan and given up for adoption by her through the Defendant L.D.S. Social Services.

##### A. Procedural Chronology of the Case.

1. The Plaintiff's Verified Complaint was filed on January 11, 1995 (R. 1-21). The Defendants answered the Plaintiff's

Complaint on January 30, 1995 (R. 25-29).

2. The Plaintiff sent his first discovery to the Defendants on February 17, 1995 (R. 30). The Defendants responded to the discovery on March 27, 1995 (R. 35-37). The Plaintiff filed a Motion to Compel on April 4, 1995 (R. 38-44).

3. The Defendants filed a Motion to Assert Exclusive Jurisdiction under the Uniform Child Custody Jurisdiction Act on May 12, 1995 (R. 50-157).

4. On May 12, 1995, the Defendants filed a Motion for Joinder of Adoptive Parents (R. 158-166).

5. On June 2, 1995, a Notice to Submit for Decision was submitted to the trial court for a determination of Plaintiff's Motion to Compel, Defendants' Motion under UCCJA and Defendants' Motion for Joinder of Adoptive Parents (R. 168-169). On August 15, 1995, the court entered its ruling denying Plaintiff's Motion to Compel and granting the motions filed by the Defendants (R. 170-171). An Order interpreting the court's ruling was filed on August 30, 1995 (R. 172-174).

6. The Defendants filed a Motion for Summary Judgment on September 27, 1995 (R. 177-226). The Plaintiff filed his response to the Defendants' Motion for Summary Judgment on October 12, 1995 (R. 227-259). Counsel for the adoptive parents filed their response on October 20, 1995 (R. 262-263). The Defendants filed their Reply Memorandum on October 23, 1995 (R. 264-278).

7. On November 14, 1995, the trial court denied Plaintiff's

Request for Oral Argument and entered its Ruling which was subsequently incorporated into an Order dated November 30, 1995 (R. 284-288). In relevant part, the court ruled as follows:

. . . The Court, having reviewed the file, considered the memoranda of counsel, and being fully advised in the premises, hereby orders as follows:

1. There is no material issue of fact.

2. Defendants are entitled to judgment as a matter of law because (a) plaintiff has made no efforts to file a notice of claim of paternity with the Utah Department of Health; (b) plaintiff is barred from asserting any interest in the child and has no right of consent to the child's adoption. Utah Code Annotated 78-30-4.8 (1994 Supp.); and (c) the recent case of In re Adoption of W., 275 Utah Adv. Rep. 20 (Utah App. 1995), is directly on point in rejecting plaintiff's legal claims.

3. Defendants' Motion for Summary Judgment is granted.

4. Plaintiff's Cross-Motion for Summary Judgment is denied.

5. Plaintiff's request for oral argument is denied, pursuant to Rule 4-501(c)(b), Code of Jud. Admin., because "the issue . . . governing the granting [of summary judgment] has been authoritatively decided."

R. 287.

8. The Plaintiff filed his Notice of Appeal on December 29, 1995 (R. 291-292).

**B. Statement of Facts.**

1. The Plaintiff was born on November 27, 1974, is 21 years of age and has continually been a resident of the State of California (Beltran affidavit, para. 2, R. 234).

2. The Defendant Denise Allan was 20 years old when she

filed her affidavit in October of 1995 and was likewise a resident of the State of California, residing with her parents (Allan affidavit, para. 2, R. 212).

3. The Plaintiff and Defendant agree that they began dating in 1993 and as a result of their romantic involvement, the Defendant Denise Allan became pregnant (Beltran affidavit para. 3, R. 233; Allan affidavit para. 3, R. 212).

4. The Plaintiff and the Defendant Allan further agree that in approximately March of 1994, one month into the pregnancy, Allan informed the Plaintiff that she was pregnant and that the Plaintiff was the father (Beltran affidavit at para. 4, R. 233; Allan affidavit at para. 3, R. 212).

5. The Plaintiff contends that in May of 1994, he broke up with Allan and for the first time discussed the possible adoption of the child. The Plaintiff contends that over a three-day period he argued with Allan, told her he would not agree to adoption and that he wanted the child (Beltran affidavit at para. 5, R. 233). Allan acknowledges that adoption was discussed and does not contend that the Plaintiff ever agreed to adoption. Allan does not contest that the Plaintiff, at all times, refused to agree to adoption and manifested his intent to raise the expected child (Allan affidavit, paragraphs 3-5, R. 212).

6. The Plaintiff contends that he remained friends with Allan until she "disappeared sometime in August of 1994" (Beltran affidavit para. 6, R. 233).

7. Allan contends that in June of 1994, approximately four

months into the pregnancy, she contacted LDS Social Services in California regarding the placement of her baby for adoption (Allan affidavit para. 5, R. 212). Allan contends that in July of 1994 she requested the Plaintiff to complete a background information form given her by LDS Social Services in California to be used in placing the baby for adoption (Allan affidavit para. 5, R. 212). Plaintiff acknowledges that he received adoption papers from Allan in August or September of 1994. The Plaintiff refused to sign them but did fill out information regarding medical and social background in case of medical complications (Beltran affidavit para. 7, R. 233). A copy of the forms that were completed by the Plaintiff were made part of the Court's file. The cover sheet for the forms, which fails to include any heading of the agency or persons preparing the form, provides as follows:

This BACKGROUND INFORMATION form is designed to provide you and us with a tool wherein significant social and medical information about your child's heritage is collected. If you plan adoption for your child, the identifying information you supply will be kept confidential. General information will be shared with your child's new family. If you have chosen to raise this child, you may wish to use this form to preserve information about yourself and the child's mother for future use . . . . (Emphasis added).

R. 203-208.

8. Thereafter, the Plaintiff continued to make plans to become a single parent (Beltran affidavit para. 9, R. 233).

9. The Plaintiff contends that he was never told that Allan had plans to go to Utah and specifically was not told by Allan

that she was leaving (Beltran affidavit para. 11, R. 232). In Allan's affidavit, she indicates that on August 15, 1994, she left California for Utah where she planned to complete her pregnancy (Allan affidavit para. 6, R. 211).

10. The Plaintiff contends that he did not learn of Allan's departure to Utah until late October of 1994. On October 27, 1994, the LDS Social Services sent a letter to the Plaintiff, which provided as follows:

This letter is to inform you that Denise Allan is being assisted by this agency in making an adoption plan for her child which is due to be delivered the end of November 1994. She has named you as a possible father of her unborn child . . .

Thank you for the background information we have already completed. It would be helpful if you could complete the family history pages and the WAIVER (in duplicate) signed in the presence of a notary. A self-addressed stamped envelope is enclosed for your convenience.

R. 249, Beltran affidavit para. 12, R. 232.

11. The Plaintiff, upon receiving the letter from LDS Social Services, wrote a letter, dated November 3, 1994, to Beverly Bekker which states as follows:

. . . Please be advised that I have filed a Complaint to Establish a Paternal Relationship requesting custody of our unborn child in the Superior Court of California, Case No. PF000505.

I do not intend to give up any of my paternal rights to this child, and, after blood testing, if the child proves to be mine, I intend to pursue custody as vigorously as possible.

I am enclosing a copy of the action filed here on October 26, 1994, and Denise Allan will be served with this action as quickly as that can be arranged.

If you have any questions, please contact me.

R. 184, Beltran affidavit para. 12; R. 232.

The Plaintiff also attempted to telephone the author of the Social Services letter, but Beverly Bekker hung up on the Plaintiff and accordingly, the Plaintiff did not have an opportunity to discuss all of the issues of the adoption with her (Beltran affidavit para. 16, R. 231; R. 273). Beverly R. Bekker in her affidavit filed with the court does not dispute that the Plaintiff attempted to discuss the case with her (Bekker affidavit, R. 131-133). The Plaintiff then corresponded with Bekker's supervisor, Richard E. Black and forwarded a letter to him dated December 11, 1994. The Plaintiff received a letter from Mr. Black refusing to provide any information and indicating that the adoption had been completed in November, 1994 (R. 1; Beltran affidavit paragraphs 16, 17, R. 231).

12. Allan acknowledges that she received a letter from the Plaintiff's mother toward the end of October indicating that both the Plaintiff and his family intended to take the child (R. 200-202, Allan affidavit para. 6, R. 224).

13. On October 26, 1994, the Plaintiff filed a paternity action in California seeking sole legal and physical custody of the child (R. 193-199, Beltran affidavit para. 13, R. 232). A copy of the California Summons, Restraining Order and Complaint were sent to Allan in Utah on November 3, 1994 and received by her, as shown by the Certified Mail receipt, on November 7, 1994 (R. 192, 199). The Restraining Order, issued by the California Court specifically provided:

You [Allan] and the other party are restrained from removing the minor child or children for whom this action seeks to establish a parent-child relationship from the state without the prior written consent of the other or an order of the Court.

These restraining orders are effective against Petitioner upon filing a Petition and against Respondent on personal service of the Summons and Petition or on waiver and acceptance of service by responding.

They are effective until the final decree is entered, the Petition is dismissed, or the Court makes a further order . . . .

R. 245.

14. On November 14, 1994, Allan gave birth to a baby girl in a Utah County hospital. On November 17, 1995, Allan signed a Relinquishment and Consent for Adoption (Allan affidavit paragraphs 11-12, R. 210; R. 191).

15. On November 25, 1994, Allan returned to California where she resides with her parents and attends college (Allan affidavit para. 13, R. 210).

16. On January 11, 1995, the present action was filed and on January 12, 1995, Plaintiff requested the entry of default against Allan in the California Court (R. 154). The default was ultimately set aside by the stipulation of the parties and based upon the filing of the Utah action, the California matter was dismissed on June 23, 1995 (R. 175-176).

#### SUMMARY OF ARGUMENT

It is the Plaintiff's position that there are significant issues of fact that have been created by the pleadings and affidavits filed in this case. The existence of those material

issues of fact establishes that the trial court committed error in granting summary judgment.

The facts established by the Plaintiff in this case meet the requirements set out in statute and case law for the application of the impossibility exception to the required filing of a Notice of Paternity. It is submitted that the Plaintiff has established sufficient issues of fact to entitle him to an evidentiary hearing at which time he could establish that it was impossible for him to file a Paternity Notice within the required time frame and the impossibility was created through no fault of his own.

Finally, a rational interpretation of Ellis, due process requirements and the adoption statute mandate a finding that a strict interpretation of the adoption statute and the requirement that a notice be filed within ten days after it becomes possible is not fundamentally fair as applied to the facts of this case. Accordingly, the fact finder should be allowed to consider all of the facts and particularly all of the efforts the Plaintiff took to establish his parental rights.

#### ARGUMENT

##### POINT I: THE PRESENCE OF DISPUTED ISSUES OF FACT AND THE IMPROPER APPLICATION OF THE LAW PRECLUDES THE GRANTING OF SUMMARY JUDGMENT.

Rule 56(c) of the Utah Rules of Civil Procedure provides that a party is entitled to an order granting summary judgment only if:

The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law. (Emphasis added.)

The first issue in determining the propriety of the granting of summary judgment is whether or not there are disputed material issues of fact. In reviewing that issue, this Court considers the evidence in the light most favorable to the losing party and affirms the granting of summary judgment "only where it appears that there is no genuine issue as to any material issues of fact, or where, even according to the facts as contended by the losing party, the moving party is entitled to judgment as a matter of law." D & L Supply v. Saurini, 775 P.2d 420, 421 (Utah 1989); Themy v. Seagull Enter., Inc., 595 P.2d 526, 528-29 (Utah 1979); Ward Perkins v. Great-West Life Assurance Company, 814 P.2d 1125 (Utah Ct. App. 1991). In reviewing the case to determine the presence of disputed material facts, the determination of the trial court is given no deference by the appellate court. Neiderhauser Builders & Dev. Corp. v. Campbell, 824 P.2d 1193, 1196 (Utah App. 1992).

The second issue relates to a review of the trial court's application of the law to the facts. The appellate court reviews the conclusions of the trial court for correctness, without according any deference to the trial court's determination. Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991); Country Oaks Condominium Management Comm. v. Jones, 851 P.2d 640, 641 (Utah 1993); Allen v. Prudential Property and Casualty Ins. Co., 839 P.2d 798, 800 (Utah 1992); Brown v. Weis, 871 P.2d 552 (Utah Ct. App. 1994).

**POINT II: THE APPELLANT'S FAILURE TO FILE A NOTICE OF  
PATERNITY IS EXCUSED BY THE "IMPOSSIBILITY" EXCEPTION  
TO THE REGISTRATION REQUIREMENTS.**

**A. An Exception to Filing a Notice of Paternity is  
Preserved by Utah Statutes.**

U.C.A. 78-30-4.8 (1994) establishes the requirement of filing a Notice of Paternity by a person who claims to be the father of a child born out of marriage. The statute, which was amended in 1990 to reflect recent decisions of Appellate Courts, specifically delineates the rights of unmarried fathers. In relevant part, the statute provides as follows:

(1)(a) Any person who is the father or claims to be the father of a child born outside of marriage may file notice of his claim of paternity and of his willingness and intent to support the child to the best of his ability with the state registrar of vital statistics in the Department of Health . . .

(2) The notice may be filed prior to the birth of the child but must be filed prior to the time the child was relinquished to a licensed child placing agency or prior to the filing of a petition by a person with whom the mother has placed the child for adoption . . .

(3) The Legislature finds that a certain degree of finality is necessary in order to facilitate the state's interest in expediting the adoption of young children and in protecting the rights and interests of the child, the birth mother, and the adoptive parents. Therefore, a putative father who fails to file his notice of paternity is barred from thereafter bringing or maintaining any action to assert any interest in the child unless he proves by clear and convincing evidence that:

(A) It was not possible for him to file a notice of paternity within the period of time specified in Subsection (2);

(B) His failure to file a notice of paternity was through no fault of his own; and

(C) He filed a notice of paternity within

10 days after it became possible for him to file.

(4) Except as provided in Subsection 78-30-4.1(4) failure to file a timely notice of paternity shall be deemed to be a waiver a surrender of any right to notice of any hearing in any judicial proceeding for adoption of the child, and the consent of that person to the adoption of the child is not required . . . . (Emphasis added).

Accordingly, the Plaintiff, a putative father, who failed to file a Notice of Paternity, prior to the birth of the child (November 14, 1994) and prior to the date that the natural mother, Allan, relinquished her rights to the child (November 17, 1994), must establish that it was not possible for him to file the Notice of Paternity through no fault of his own.

**B. Utah Case Law Created the "Impossibility" Exception to the Filing of a Notice of Paternity.**

The first comprehensive discussion of exceptions to the requirement that a putative father file a notice of paternity is contained in Ellis v. Social Services Dept., 615 P.2d 1250 (Utah 1980). At the time Ellis was decided, the Adoption Statute did not contain the "impossibility" exception cited in Point IA above. Factually, the natural mother and father were residents of California and engaged to be married. Two weeks prior to the anticipated wedding, the mother terminated the engagement. However, both parties were aware of the pregnancy. Several days prior to the birth of the child, the natural mother left California for Utah and arranged to place the child with Social Services. The baby was born on December 15, 1979 and the mother signed a relinquishment on December 19, 1979. On December 21,

1979, an attorney representing the putative father contacted Social Services and informed its agents and employees of the putative father's intent to assert his parental rights. Id. at 1252-53.

Recognizing that a putative father's right to custody of his illegitimate child is superior to all others, except the child's mother, the Court held that the statute in question was void and unenforceable as it relates to the facts in Ellis.

The statute in question provides that if the putative father fails to file his notice of paternity prior to the happening of certain events, he is thereafter barred. In the usual case, the putative father would either know or reasonably should know approximately when and where his child was born. It is conceivable, however, that a situation may arise when it is impossible for the father to file the required notice of paternity prior to the statutory bar, through no fault of his own. In such a case, due process requires that he be permitted to show that he was not afforded a reasonable opportunity to comply with the statute.

Id. at 1256.

Noting that Ellis was decided by the trial court on a motion to dismiss, the Utah Supreme Court explicitly held that:

Plaintiff was not given an opportunity to present evidence to show as a factual matter that he could not reasonably have expected his baby to be born in Utah. He should be afforded an opportunity to make that showing. If he is successful in showing that determination of his parental rights was contrary to basic notions of due process, and that he came forward within a reasonable time after the baby's birth, he should be deemed to have complied with the statute. (Emphasis added).

Id. at 1256.

The Court found that the assertion that the natural mother left California, without advising the putative father, that she

declared the father to be unknown and, that she relinquished custody within four days after birth, warranted a full factual review.

The Court revisited the issue in Wells v. Children's Aide Society of Utah, 681 P.2d 199 (Utah 1984). In Wells, the Supreme Court reviewed the issue that had been fully tried at the trial court level. The putative father was advised prior to the birth of the child that he needed to file an Acknowledgment of Paternity. The father signed a form on September 18, but did not mail it until September 23, the day of the birth and one day before the natural mother relinquished custody. The Department of Vital Statistics did not receive document until September 30. The Supreme Court reversed the judgment of the trial court which had concluded that the father was denied a reasonable opportunity to comply with the statute. The Court held that the reasonable opportunity standard applies only where it is "first shown that it was impossible for the father to file through no fault of his own." Id. at 689. In distinguishing Ellis and establishing that it was not "impossible" for the father to file, the Court noted that (1) the birth occurred in the same state as the father's residence; (2) neither the mother nor the agency were attempting to prevent him from learning of the birth or asserting his parental rights; (3) neither the mother nor the agency knew at the time that the child was relinquished that the father was seeking to or intending to assert his parental rights. The Court held that the putative father had contacted counsel, had been

given copies of the required forms and could have filed the document precluded a finding of "impossibility." Id. at 689-90.

Importantly, Wells was decided after a full evidentiary hearing and a fair opportunity given to all parties to establish their claims.

Next, the Court decided in Sanchez v. LDS Social Services, 680 P.2d 753 (Utah 1984). In Sanchez, the Supreme Court upheld the application of the statute finding that (1) both parents were Utah residents; (2) the mother indicated she was considering adoption; (3) the parents attended a counseling session at LDS Social Services; (4) the father visited the mother and child in the hospital prior to the time the child was relinquished; (5) the father knew of the pending adoption and did not protest the mother's decision to place the child for adoption.

The Supreme Court reviewed the issue again in In re Adoption of Baby Boy Doe, 717 P.2d 686 (Utah 1986). In that case, the mother and father had lived together for three and a half years. In June of 1994, the natural mother moved to Utah, while pregnant. Although relatives of the mother attempted to dissuade contact with the father the parties conversed and in fact the putative father came to Utah and spent time with the natural mother. The parties agreed to move to Arizona and get married. While the putative father was in Arizona locating a job and a place to live, the natural mother gave birth in Utah and relinquished her parental rights. Although adoption had been discussed, all parties acknowledged the putative father's

opposition to the adoption. Upon learning of the adoption, the putative father contacted a lawyer and took steps to set aside the termination of his rights. Id. at 687-88.

It is important to note that the trial court conducted a full evidentiary hearing in Doe, supra and the court determined that since the putative father knew where the natural mother was residing, that the natural mother intended to place the child for adoption and that she was susceptible to her relatives' influences. Accordingly the trial court held that it was not impossible for the putative father to file his Notice of Paternity. Id. at 688.

In reversing the trial court's decision, the Utah Supreme Court distinguished the facts in Doe from Wells and Sanchez. The Court found that (1) the putative father was not a resident of Utah and had only visited for less than a week; (2) the child's mother told the putative father that she would move to Arizona and marry him; (3) all parties knew of the father's intent and desire to rear the child. Id. at 690. The Court summarized as follows:

Where the father does not know of the need to protect his rights, there is no "reasonable opportunity" to assert or protect parental rights. In such a case, the operation of the statute fails to achieve the desired balance and raised serious due process concerns . . . because of the clearly articulated intent of the father to keep and rear the child, the full knowledge of that intent on the part of all involved, the representations made by the mother, the actions of her family, the premature birth, and the non-residency of the father coupled with his absence at the time of birth, we cannot say that this was either a usual case or that notice may be implied. We, therefore conclude that Appellant has successfully

shown that the termination of his parental rights was contrary to basic notions of due process and that he came forward within a reasonable time after the baby's birth (such that) he should be deemed to have complied with the statute.

Finally, the issue was reviewed by the Utah Court of Appeals in In re Adoption of W, 375 Utah Adv. Rep. 20 (Utah Ct. App. 1995). In that case, the natural mother, who was a minor living at home, was beaten by her parents because of her relationship with the putative father. The biological mother was taken to a maternity home in Indiana by her parents and then to Las Vegas two months later in December of 1993. The putative father did not know where the mother was located. The putative father was notified of the birth and the pending adoption in Utah in a phone conversation in January of 1994. However, the putative father did not contact the adoptive parents until March 7, 1994 and took no action until May of 1994. Again, however, a full evidentiary hearing was held by the trial court. Id. at 20-21.

The Court held that the failure of the putative father to file the Notice of Paternity, after he knew of the pending Utah adoption, precluded a finding that it was impossible for the putative father to comply with the statute. Id. at 23-24.

C. The Facts Established in this Case Entitle the Appellant to the Reversal of Summary Judgment and a Full Evidentiary Hearing.

The sole issue raised by this appeal is the propriety of denying the Plaintiff a right to a full evidentiary hearing and deciding the case by summary judgment. If each of the cases decided by the Utah Appellate Courts is reviewed and contrasted

with the facts of this case, it is clear that the Plaintiff is entitled to go to trial on the allegations set out in his Complaint.

As discussed above, the Utah Supreme Court in Ellis held that a putative father should be afforded an opportunity to make a factual showing that he came forward within a reasonable time after the baby's birth, that the termination of parental rights was contrary to basic notions of due process and that he should be deemed to have complied with the statute. Id. at 1256.

In Ellis, the Court found that the case should be remanded for hearing based upon the fact that the natural mother left California without advising the father; that the natural mother declared the natural father to be unknown; and, that custody was relinquished within four days after birth. In this case, everyone knew that the Plaintiff, Beltran, intended to raise the child and would not consent or acquiesce in the adoption. Allan left California without advising the Plaintiff. In fact, the first set of documents presented to the Plaintiff were from the California Social Services. The Plaintiff, after being advised of Allan's intent to place the child for adoption, immediately filed an action in California and obtained a Restraining Order. Those documents were in Allan's hands by November 7, 1994, a week before the birth of the child and ten days before she relinquished her rights. The agents of LDS Social Services were uncoroporative and in fact hung up on the Plaintiff. No one advised the Plaintiff of the requirement of filing the Notice of

Paternity and the need for that document was conveniently omitted from all correspondence by LDS Social Services or Allan. The Plaintiff herein was not advised of the child's birth or the relinquishment until significantly later. The facts in this case are much stronger in supporting a finding of "impossibility" than in Ellis. Certainly, the Plaintiff is entitled to a full hearing and the right to present testimony.

In Wells, supra, the Court found that the trial court erred in finding "impossibility" because (1) the birth occurred in the same state as the father's residence; (2) neither the mother nor the agency were attempting to prevent him from learning of the birth or asserting his parental rights; (3) neither the mother nor the agency knew at the time that the child was relinquished that the father was seeking to or intending to assert his parental rights. In contrast to Wells, the birth did not occur in the same state as the father's residence. The mother and LDS Social Services attempted to prevent the Plaintiff from learning of the birth or asserting his parental rights. Neither LDS Social Services nor Allan informed the Plaintiff of the birth and relinquishment even though his desire to establish a relationship with the child was known to both. The correspondence of LDS Social Services provided a means for the Plaintiff to waive his rights but did not explain the need for filing a Notice of Paternity to preserve his rights. According to the standard set in Ellis, Plaintiff is entitled to prevail on the merits. Certainly, the Plaintiff is entitled to a hearing

and the right to establish his case.

In contrast with Sanchez, supra both parents in this case were California residents. Although Allan indicated she was considering adoption, the Plaintiff was adamant throughout that he would not consent or acquiesce to an adoption. The Plaintiff never attended counseling with LDS Social Services and consistently informed its agents and employees of his intent not to relinquish the child. The Plaintiff in this case did not know of the baby's birth and certainly did not visit the mother and child in the hospital. The Plaintiff had no knowledge of the events that took place between November 14, 1994 (the birth of the baby) and November 17, 1994 the date of Allan's relinquishment.

The facts in this case are stronger than those which warranted the Supreme Court's reversal of the trial court's holding in Doe, supra. In this case, the Plaintiff was never in Utah. Upon learning of Allan's departure to Utah, the Plaintiff did everything that he thought necessary to preserve and protect his rights. He filed an action and obtained a Restraining Order in California. The Plaintiff immediately tried to contact LDS Social Services. The Plaintiff obtained legal counsel and filed appropriate actions in Utah. Most importantly, the Plaintiff, at all times, manifested his intent to keep the child to the natural mother, the agents and employees of LDS Social Services in California and Utah and with members of the parties' families.

As it relates to the Court's holding in Doe, supra, the

Plaintiff in this case took immediate action upon learning that Allan was in Utah to give the child up for adoption. The Plaintiff did not wait for a period of months. Instead, the Plaintiff immediately filed an action in California and obtained a Restraining Order.

In summary, the facts which entitle the Plaintiff to a reversal of the Order granting summary judgment under the existing case law in Utah are as follows.

1. The Plaintiff and the natural mother are residents of California. Aside from the visit to Utah to give birth, the natural mother has resided in California.

2. The Plaintiff has never wavered in manifesting a clear intent to maintain his parental rights with the child.

3. Allan submitted adoption papers to the Plaintiff from the California LDS Social Services. The Plaintiff could reasonably conclude that any action the Plaintiff was intending with regard to adoption would be conducted in California. The Plaintiff refused to sign any waiver or consent and filled out only the relevant social and medical histories. Those forms clearly indicated that they were applicable in situations in which the parties intended to keep the child.

4. Allan left for Utah without advising the Plaintiff of the trip, its purpose or duration.

5. When the Plaintiff learned of Allan's action, he

prepared and filed a Complaint and obtained a Restraining Order in California to establish his parental rights and restrain Allan from leaving California. The fact that Allan left did not deprive the California Court of the right to insist that Allan return to California. The Plaintiff, in keeping with the Court's practice of sending process by mail and attaching a waiver for a defendant to sign in lieu of personal service, sent all the documents to Allan on November 3, 1994. Allan received the documents on November 7, 1994 and did nothing to alert the Plaintiff or the Court of her intended action.

6. When the Plaintiff received the LDS Social Service letter dated October 27, 1994, he responded in writing and tried to contact the author of that letter who hung up on him. The Plaintiff continued to try and obtain information from the LDS Social Services, which efforts were ignored. LDS Social Services and Allan, although knowing the Plaintiff's location and phone number, refused to advise him of the baby's birth or the pending adoption.

7. LDS Social Services, knowing of the Plaintiff's response to Bekker's letter of October 27, 1994, failed to advise the Plaintiff of the need to file a Notice of Paternity or its intent to proceed in the adoption matter in the Utah forum.

8. All parties involved in this matter have known since prior to the birth of the child, the intent of the

Plaintiff to establish and maintain a relationship with his child.

**POINT III: THE DECISION OF THE UTAH COURT OF APPEALS IS NOT DISPOSITIVE OF THE ISSUES IN THIS CASE AND THE UTAH ADOPTION STATUTE AS APPLIED TO THE FACTS OF THIS CASE IS UNCONSTITUTIONAL.**

**A. Utah Case Law Establishes that a Filing of a Notice of Paternity is not Always Required to Preserve the Right to Establish the "Impossibility" Exception.**

The trial court, in its decision, relied upon Utah Code Annotated 78-30-4.13 (Supp. 1995) and the decision of the Utah Court of Appeals, In the Matter of the Adoption of W, supra. The trial court reasoned that inasmuch as the plaintiff had made "no efforts to file notice of his claim of paternity with the Utah Department of Health" the plaintiff was precluded from establishing "impossibility" under the statute (R. 284-292).

The Utah Court of Appeals in In the Matter of the Adoption of W, supra, held that inasmuch as the putative father did not file the Notice of Paternity within ten days after finding out that the child had been placed with an adoptive couple in Utah, he could not take advantage of the "impossibility" exception in the statute. It is respectfully submitted that the ruling of the Court of Appeals cannot be read as broadly as the trial court intimated. The ruling cannot stand for the proposition that the failure to file a Notice of Paternity, under all circumstances, acts as a bar to the establishment of "impossibility" under the statute. In In re W, supra, the putative father did not file his Notice of Paternity for more than eight months after he was informed that the child was in Utah and was the subject of

adoption proceedings. Id. at 24. Arguably, the failure to file the notice affected the notice that the relevant parties were entitled to during the various stages of the adoption proceedings. However, as it relates to the facts of this case, the filing of the notice of paternity is a moot issue in that all parties and their representatives knew of the Plaintiff's position and under any construction of the facts, the Plaintiff could not reasonably have been expected to file a notice before the birth of the child or before the natural mother's relinquishment is taken.

The Court in Ellis, supra, explicitly acknowledged that "a statute fair upon its face may be shown to void and unenforceable as applied." Id. at 1256. The Court then held that a situation may arise where "it is impossible for a father to file a Notice of Paternity prior to the statutory bar, through no fault of his own. In such a case, due process requires that he be permitted to show that he was not afforded a reasonable opportunity to comply with the statute." Id. at 1256. In Ellis, the Utah Supreme Court held that if a putative father was successful in showing that the termination of his parental rights was contrary to basic notions of due process, and "that he came forward within a reasonable time after the baby's birth, he should be deemed to have complied with the statute." Id. at 1256.

Utah Code Annotated 78-30-4.8 (1994 as Amended) deviated from the language in Ellis that established the prerequisites to the "impossibility" exception. The statute requires that a

putative father establish that it was not possible for him to file a Notice of Paternity (prior to the birth of the child or the time the child is relinquished to a licensed child placing agency or prior to the filing of a Petition for Adoption); that his failure was through no fault of his own; and, that he filed a Notice of Paternity within ten days after it became possible for him to file.

In essence, Ellis requires a father to "come forward within a reasonable time after the baby's birth" and the statute requires an absolute filing of a Notice of Paternity within ten days after it became possible for him to file, regardless of whether the delayed filing would have any effect on the facts of the case or the notice imparted to the parties. It is respectfully submitted that a putative father who is deemed to "come forward within a reasonable time after the child's birth" is entitled to establish the "impossibility" exception under Ellis regardless of whether a Notice of Paternity is filed. The Court in Ellis reserves to the fact finder whether the father's efforts were reasonable and the filing of the Notice of Paternity is only one element that should be considered.

**B. The Requirement that the Notice of Paternity be Filed Within 10 Days After it Becomes Possible for the Father to File does not Serve a Legitimate Purpose.**

The Court in Wells, supra, established that the requirement of filing a Notice of Paternity was constitutional and afforded appropriate due process because:

. . . the state has a compelling interest in speedily identifying those persons who will assume a

parental role over newborn illegitimate children. Speedy identification is important to immediate and continued physical care and it is essential to early and uninterrupted bonding between child and parents. If infants are to be spared the injury and pain of being torn from parents with whom they have begun the process of bonding and if prospective parents are to rely on the process in making themselves available for adoption, such determinations must also be final and irrevocable.

Id. at 206-207.

The Court in Wells held that "in the common cases" the requirement of personal notification "would frustrate the compelling state interest in the speedy determination" of adoption matter. Id. at 207. There is no question that in the common case, the requirement that notices of paternity be filed meets all of the due process requirements of the United States and Utah Constitution. However, the Utah Supreme Court has held that there are circumstances when a putative father will be allowed to circumvent the need for filing when it is impossible for him to do so. The issue then becomes whether the ten day requirement or even the late filing serve any useful purpose at all.

The present system allows an adoption placing agency or adoptive parents to search a record for a Notice of Paternity and if none, proceed with placement or adoption. That system fulfills the purpose of the adoption statute and fits within the compelling state interests identified in Wells. However, if a fact situation is created where it is impossible for a father to file a notice, it must be recognized that there are some cases where a late filing of the Notice of Paternity serves no useful

purpose. If the Notice of Paternity is not filed timely, adoptive parents, natural parents, courts and adoption agencies act in reliance thereon in placing children and processing adoptions. At that stage, the damage is done. If a reviewing Court finds that a father could not possibly file the required notice, the late filing of that document serves no purpose. Filings are checked prior to the entry of a final Decree of Adoption (U.C.A. 78-30-4.8(5) (1995). If it is impossible to file a notice by that time, a tardy filing is of no use to anyone.

Accordingly, there is no interest that is served by an absolute requirement that a Notice of Paternity be filed within ten days after it is possible. No one can rely on that provision. Ten days after it becomes possible might be ten days or months after an adoption is granted. The key is that a putative father be required to come forward as quickly as reasonably possible.

Not only is the ten day requirement unreasonable but the requirement that "coming forward" means only the filing of a Notice of Paternity is also unreasonable. Because a certificate from the Department of Health regarding the filing of a Notice of Paternity is necessary only when the final Decree of Adoption is signed, adoptive parents, adoption agencies and the Courts are not expected to check the record at any other time. Accordingly, the most reasonable means of "coming forward" may be actual notice to the parties and persons involved. That way, parties

can act quickly and decisively to resolve the issue instead of relying on a late filing that no one may ever review.

It is respectfully submitted that whether or not a father filed a Notice of Paternity and within what time frame is only one element of many that must be reviewed. The strict construction of Utah Code Annotated 78-30-4.8(3) (1994 as Amended) denudes the ruling of the Court in Ellis. Ellis stands for the proposition that the parental rights of an unwed father cannot be terminated when it is impossible for the father to timely file a Notice of Paternity and the father acts quickly and reasonably to establish his rights. The Court held that to the extent that the statute, as applied, violated the father's rights, the due process rights of the natural father were violated and the statute was therefore void and unenforceable. The exception carved out in Ellis is restricted unreasonably, as applied to the facts of this case by the absolute filing requirement of a Notice of Paternity.

As Justice Durham noted in the dissenting opinion in Sanchez, supra "the test must be whether fundamental fairness has been preserved in the application of the statute to a given constellation of facts." Id. at 756. As argued hereinafter, the strict statutory construction requiring the filing of a notice within ten days after it becomes possible constitutes a violation of the Plaintiff's due process rights under the Utah and United States Constitution.

C. The Requirement that a Notice of Paternity be Filed Within Ten Days After it is Possible is

Unconstitutional as Applied to the Facts of this Case.

It is the Plaintiff's position that it was impossible for him to file a Notice of Paternity prior to January of 1995 after he became aware that the adoption was proceeding in Utah and that California was not the relevant forum for the establishment or termination of his parental rights.

Pursuant to the terms of the statute, U.C.A. 78-30-4.8(3) (1994 as Amended), the Plaintiff was required to file a Notice of Paternity ten days thereafter. However, the filing of the notice at that time would not have served any useful purpose. The record in this case establishes that the child was born on November 14, 1994, the relinquishment of the natural mother was taken on November 17, 1994 (R. 183) and the Certificate of Search for Acknowledgment of Paternity was made on November 16, 1994 (R. 181).

The search of the paternity records on November 16, 1994, satisfies the requirements of the statute that:

. . . prior to its entering a final Decree of Adoption, a certificate from the Department of Health, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers of children born outside of marriage and that no filing has been found pertaining to the child in question.

U.C.A. 78-30-4.8(5) (1994 as Amended).

The filing of a Notice of Paternity on November 17, 1994 or thereafter would not have any effect on the facts of this case. To the extent that the Notice of Paternity is relied upon by natural or adoptive parents, adoption agencies or the Courts, the

failure to file is not relevant after the search has been made and a certificate of non-filing is prepared by the director of health statistics. Neither the Courts, adoption agencies nor persons petitioning in adoption proceedings have any obligation to recheck with the Department of Health. If the Plaintiff had filed in late November, December, 1994 or January of 1995, it would have had no effect. Instead, the Plaintiff in this case took steps to provide the natural mother, the adoption agency and adoptive parents of his intent to pursue his parental rights. The procedures undertaken by the Plaintiff were far more effective in providing actual notice to the parties involved.

The Utah Supreme Court has carved an exception into the requirement that putative fathers file notices of paternity. The Supreme Court has required a finding of impossibility through no fault of the father and a requirement that he act reasonably in establishing his claim. As applied to the facts of this case, it would violate "fundamental fairness" to review this case on the basis of whether a useless late filing should have been made as opposed to an evaluation of all of the other relevant indicia as to whether the Plaintiff acted reasonably.

One final note should be made. There is simply no way that a factual determination of whether a filing was necessary and if so, within what time frame, could disrupt the stated purpose of the present adoption statute. The statutory creation of an arbitrary ten day period cannot reasonably be expected to curtail damage or delay proceedings. The ten day limit is not

connected with any of the procedure outlined in the adoption statute and the late filing cannot reasonably be interpreted to impart notice to any of the relevant parties. A rational approach to the exception carved out in Ellis requires that the absolute requirement of filing within ten days after it becomes possible not be strictly construed. Although the Court has ruled that strict compliance is reasonable (Sanchez, supra at 755), the rulings have been made with respect to the overall scheme incorporated in the adoption statute. There is no useful purpose for the strict construction of a ten day period that is arbitrary, not tied to any adoption proceeding and is not likely to impart notice to the relevant parties.

The best illustration of the lack of fundamental fairness is created by assuming that the Plaintiff complied with the statute. If Plaintiff had filed the required notice in late November or thereafter, none of the facts of this case would be different. However, if Plaintiff had failed to impart the notice of his rights by other means, certainly the participants herein could have claimed prejudice.

#### CONCLUSION

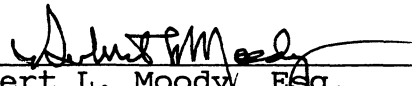
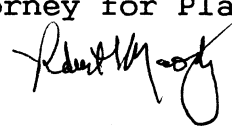
There are significant issues of fact that have been created by the pleadings and affidavits filed in this case. The existence of those material issues of fact precludes the granting of summary judgment.

The facts established by the Plaintiff in this case meet the requirements set out in statute and case law for the application

of the impossibility exception to the filing of a Notice of Paternity. The Plaintiff has established sufficient issues of fact to entitle him to an evidentiary hearing at which time he could establish that it was impossible for him to file a notice within the required time frame and the impossibility was created through no fault of his own.

A rational interpretation of Ellis, due process requirements and the adoption statute mandate a finding that a strict interpretation of the adoption statute and the requirement that a notice be filed within ten days after it is possible is not fundamentally fair as applied to the facts of this case. Accordingly, the fact finder should be allowed to consider all of the facts, including the filing of a Notice of Paternity, to determine if the Plaintiff took reasonable action in making his claim. The failure to file a Notice of Paternity within ten days after it becomes possible should not be a bar to a putative father's right to establish the impossibility exception carved out in Ellis.

DATED this 26<sup>th</sup> day of February, 1996.  
12<sup>th</sup> April

  
Robert L. Moody, Esq.  
Attorney for Plaintiff/Appellant  


**A D D E N D U M**

**A D D E N D U M**

**Exhibit 1**

**Ruling of Judge Burningham dated November 14, 1995**

NOV 15 1995

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

MARIO G. BELTRAN,  Plaintiff,  vs.  DENISE ALLAN; LDS SOCIAL SERVICES, an agency of the Church of Jesus Christ of Latter-day Saints; and JOHN DOES I through V,  Defendants.	CASE NO. 950400021  RULING
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This matter comes before the Court, under Rule 4-501 of the Utah Code of Judicial Administration (1995), on Defendants' Motion for Summary Judgment. The Court has reviewed the file, considered the memoranda of counsel, and upon being advised in the premises, now makes the following:

RULING

1. Plaintiff has made no efforts to file notice of his claim of paternity with the Utah Department of Health.
2. Pursuant to Utah Code Ann. § 78-30-4.13 (Supp. 1995) and because In the Matter of the Adoption of W., 275 Utah Adv. Rep. 20 (1995), is directly on point, Defendants' Motion for Summary Judgment is **GRANTED**.
3. Plaintiff's Cross-motion for Summary Judgment is therefore **DENIED**.

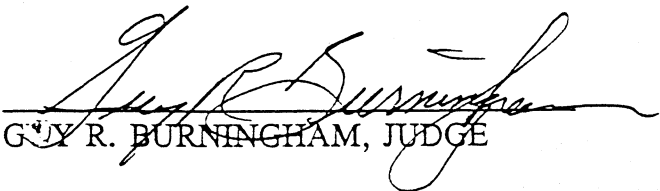
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4. Pursuant to Rule 4-501(3)(c)(b) of the Utah Code of Judicial Administration (1995), Plaintiff's request for oral argument is **DENIED**; "the issue . . . governing the granting [of summary judgment] has been authoritatively decided."

Counsel for Defendants is to prepare an order consistent with the terms of this ruling and submit it to opposing counsel for approval as to form prior to submission to the Court for signature.

Dated this 14 day of November, 1995.

BY THE COURT:

  
GUY R. BURNINGHAM, JUDGE

cc: DAVID M. McCONKIE  
MERRILL F. NELSON  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111-1104

ROBERT L. MOODY  
TAYLOR, MOODY & THORNE  
2525 North Canyon Road  
Provo, Utah 84604

A D D E N D U M

Exhibit 2

District Court's Order Granting Summary Judgment  
Dated November 30, 1995

Nov 30 4 23 PM '95



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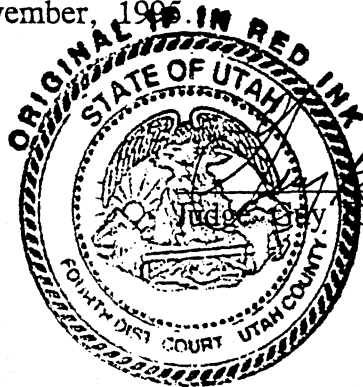
Judge Guy R. Burningham

This matter comes before the Court on the Motion for Summary Judgment of defendants Denise Allan and LDS Social Services. The adoptive parents, who joined the action as Doe defendants, joined in defendants' Motion for Summary Judgment. Plaintiff subsequently filed a Cross-Motion for Summary Judgment and requested oral argument

on the motions. The Court, having reviewed the file, considered the memoranda of counsel, and being fully advised in the premises, hereby orders as follows:

1. There is no material issue of fact.
2. Defendants are entitled to judgment as a matter of law because (a) plaintiff has made no efforts to file a notice of claim of paternity with the Utah Department of Health; (b) plaintiff is barred from asserting any interest in the child and has no right of consent to the child's adoption, Utah Code Ann. § 78-30-4.8 (1994 Supp.); and (c) the recent case of *In re Adoption of W.*, 275 U.A.R. 20 (Utah App. 1995), is directly on point in rejecting plaintiff's legal claims.
3. Defendants' Motion for Summary Judgment is granted.
4. Plaintiff's Cross-Motion for Summary Judgment is denied.
5. Plaintiff's request for oral argument is denied, pursuant to Rule 4-501(c)(b), Code of Jud. Admin., because "the issue . . . governing the granting [of summary judgment] has been authoritatively decided."

Dated this 30 day of November, 1995.



CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed the foregoing ORDER this 21<sup>st</sup> day of November, 1995, in the United States mail, postage prepaid to the following:

Robert L. Moody, Esq.  
TAYLOR, MOODY & THORNE  
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IN THE UTAH COURT OF APPEALS

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MARIO G. BELTRAN, : **CERTIFICATE OF MAILING**  
  
Plaintiff, :  
v. :  
DENISE ALLAN; LDS SOCIAL :  
SERVICES, an Agency of the Church of :  
Jesus Christ of Latter-Day Saints; :  
and JOHN DOES I THROUGH V, : Case No. 960079-CA  
  
Defendant(s). :

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I hereby certify that on this 12<sup>th</sup> day of April, 1996, I mailed a true and correct  
copy of the foregoing **Appellant's Brief**, postage prepaid, to the following:

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